

life blood . . . ,"^{103/} but because of Bell Atlantic's local exchange monopoly, M&M had no alternative but to seek relief from the MPSC.

51. Finally, Call Data Services, Inc. filed a complaint alleging that Bell Atlantic's service was extremely poor.^{104/} Specifically, CDS indicated that, despite arranging to have CDS's telephone line switched to a new address on January 28, 1994, Bell Atlantic did not attempt to make the switch until February 3, 1994. CDS also stated that, despite repeated visits by Bell Atlantic technicians, CDS's telephone still was not operational as of February 21, 1994, and that this "fiasco . . . ultimately cost [CDS] customers and money."^{105/}

52. While none of the complaints described above prove that Bell Atlantic's conduct was motivated by a desire to discriminate against its current and potential competitors, and they are not offered as proof of such proposition, they do show that each of the complainants believes they were injured by Bell Atlantic, and in a way that damages their relationship with their customers. The complaints show different ways in which an integrated BOC, if so inclined, could use its position in the local exchange to discriminate against its competitors in the provision of access facilities.

^{103/} M&M Complaint at 3.

^{104/} Letter from Michael A. Jones to the Maryland Public Service Commission Concerning Telephone Service Problems Allegedly Caused by Bell Atlantic (filed June 8, 1994) ("CDS Complaint").

^{105/} CDS Complaint at 1.

53. While CompuServe's review of informal complaints filed with the MPSC demonstrates that BOC competitors sometimes do document instances of alleged discrimination by filing public complaints, most businesses generally do not have the time, the resources, or the inclination to file complaints when they experience a problem with BOC services. Even if a BOC enhanced service competitor were inclined to file a complaint, say, for failure to install a facility on a timely basis to serve a new customer, the enhanced service provider is very sensitive to the fact that its own customers do not want to be dragged into a public forum to be part of the "evidence" of alleged BOC misconduct.^{106/}

54. With the foregoing in mind, it is worth noting that other evidence of BOC discrimination is plentiful. For instance, in comments filed with the Department of Justice last year in response to NYNEX's request for waiver of the MFJ's interexchange restriction in New York, ACC Corporation indicated that it recently "experienced significant frustration and delay in attempting to establish an interface for the provisions [sic] of directory services."^{107/} Specifically, ACC stated that it contacted NYNEX on January 6, 1994 to purchase directory and directory assistance services, but despite the fact that NYNEX

^{106/} Note that CompuServe did not file complaints to document the access service problems described in the Rutkowski Affidavit.

^{107/} Comments of ACC Corporation in Response to NYNEX's Request for a Waiver to Provide Interexchange Services in New York at 7 (filed November 18, 1994) ("ACC Comments").

provides the same services to 39 local exchange carriers in New York, ACC still had been unable to purchase these services from NYNEX at the time it filed its comments.^{108/} Similarly, hooked, Inc., a small enhanced service company located in the San Francisco area, claims it was recently denied a Centrex line by the local exchange carrier serving its area. While hooked, Inc. eventually obtained the necessary Centrex line from a competitive access provider, the refusal by the local exchange company caused it considerable expense and delay.^{109/} Thus, even though it does not appear that either ACC or hooked, Inc. filed "complaints" with a regulatory agency that would be counted in some complaint compilation, both believe they were subjects of BOC discrimination.

55. Likewise, on December 13, 1994, the Association of Teleessaging Services International ("ATSI") filed an ex parte letter with the Commission that documented a meeting between ATSI representatives and members of the Commission's Common Carrier Bureau.^{110/} Dozens of letters from ATSI's member companies were attached to the ex parte letter and demonstrate a widespread pattern of BOC discrimination against competitive providers of voice-mail services, the primary enhanced services market which

^{108/} ACC Comments at 7 and 8.

^{109/} The NII Field Hearings on Universal Service and Open Access: America Speaks Out, United States Department of Commerce at 7 (1994).

^{110/} Letter from Robert J. Butler to William F. Caton Concerning the Computer III Remand Proceeding (filed December 13, 1994).

the BOCs thus far have entered. For instance, one of the letters attached to ATSI's ex parte letter indicates that the wife of the president of a non-BOC voice-mail provider, Available Communications, Inc., called Southwestern Bell to change the ring cycle on her call forwarding, but rather than change the ring cycle, Southwestern Bell "unhooked" the woman and connected her to Southwestern Bell's voice-mail service.^{111/} Additionally, a letter from the owner of Data Voice Technology indicates that when its prospective customers called Southwestern Bell to order a Centrex feature needed to use Data Voice Technologies' voice-mail service, Southwestern Bell used the opportunity to engage in "unhooking."^{112/} Similarly, a letter from the president of Integrity Home Inspections to the Public Utility Commission of Oregon indicates that, in an effort to use the voice-mail services of one of US West's competitors, he called US West to obtain a "call forwarding busy line/don't answer" feature, but rather than provide him with the requested feature, US West tried to "unhook" him by marketing its own voice-mail service.^{113/} These sorts of discriminatory actions have had a debilitating impact on the BOCs' voice-mail competitors. Indeed,

^{111/} Letter from James D. Marchbank to Martha Lockwood Concerning Southwestern Bell's Discriminatory Provision of Voice-Mail Services (June 24, 1994).

^{112/} Letter from Ralph L. Hayes to Mark Hastings Concerning Southwestern Bell's Discriminatory Voice-Mail Marketing Techniques (January 6, 1992).

^{113/} Letter from Eric Jannsen to Myron Katz Concerning US West's Discriminatory Voice-Mail Marketing Techniques (January 2, 1992).

partially as a result of these kinds of discriminatory activities, the BOCs now control most of the market for voice-mail services.^{114/}

IV. CONCLUSION

56. In light of the foregoing, CompuServe urges the Commission to require the BOCs to provide enhanced services through fully separate structural subsidiaries.^{115/} A structural separation regime would offer significantly greater protection against anticompetitive abuses than the present nonstructural safeguards regime, without being nearly as resource-intensive or regulatorily-intrusive. The Commission does not possess the staff resources that GAO has found it would need to effectively implement nonstructural safeguards, and it is not likely to obtain those resources in the foreseeable future. The Commission now should accept the import of the Ninth

^{114/} See Enduring Local Bottleneck at 32. In this vein, due to the fact that the BOCs still are prevented from providing interLATA enhanced services by the MFJ's interexchange restriction, BOC participation in the enhanced services industry to date has been limited substantially to the provision of voice-mail services. That is why the widespread evidence of BOC discrimination in the provision of voice-mail services is relevant to predictions concerning how the BOCs are likely to conduct themselves if and when they begin providing other enhanced services on an interLATA basis.

^{115/} See paragraph four supra for a discussion of some of the separate subsidiary requirements with which the BOCs should comply.

Circuit's two remand decisions and promptly require the BOCs to establish separate subsidiaries.

Respectfully submitted,

COMPUSERVE INCORPORATED

By: Randolph S. May / BTA
Randolph J. May
Brian T. Ashby

SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

April 7, 1995

Its Attorneys

CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, hereby certify that copies of the foregoing Comments of CompuServe Incorporated have been served by hand or via first-class United States mail, postage prepaid, this 7th day of April 1995 on the following:

Hon. Reed E. Hundt
Chairman
Federal Communications
Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Hon. Andrew C. Barrett
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Hon. Rachelle B. Chong
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*Mr. James D. Schlichting
Chief
Policy and Program
Planning Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

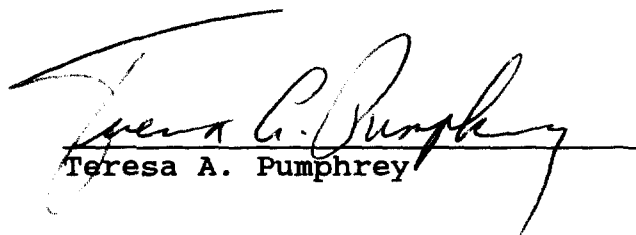
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Washington, D.C. 20554



Teresa A. Pumphrey

* By Hand



ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 EDS11 RECYCLED

EXHIBIT A

World Headquarters
5000 Arlington Centre Boulevard
P.O. Box 20212
Columbus, Ohio 43220

Telephone 614/457-8600

March 8, 1995

Mr. Peter Sparano
Chief, Consumer Assistance
New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case Number 505051

Dear Mr. Sparano:

Thank you for your acknowledgment of my letter dated February 2.

Here is additional information regarding more problems we have recently experienced with service from Nynex in New York.

On 1/11/95, we ordered a T1 link from Nynex, to be used as access to our site for multiple 56k circuits. Though we have repeatedly asked Nynex to provide order information (order number, circuit number, bill number, and due date) within two business days of placing an order, we didn't receive the order information for this circuit until 2/11/95. On that day, we were told that the T1 had actually been installed on 2/6. On 2/15, we called Nynex to confirm that the 5 56k circuits ordered on this T1 had been completed. We were told that they were not because the T1 was not installed yet! Nynex proceeded to install the T1 but with AMI instead of with B8ZS as it was ordered. This was corrected when one of our installation supervisors asked Nynex to check for this.

One of our customers, who needed two 56k channels on this T1, was particularly impacted. On one circuit, we placed the 56k order on 2/2 and received the confirming order information from Nynex on 2/9. On 2/22, we called to confirm that the circuit had been installed only to be told that, early in their installation process, the order had to be reissued (no explanation as to why) and that the circuit was now due 2/24. Had we just dispatched our engineer on 2/22 without checking first, we would have wasted time and money. The other circuit for this same customer was installed with AMI and was essentially down for a couple of days after installation until we told Nynex what to fix.

In these, as in most other situations, we don't have the option of choosing a different vendor. We are stuck with Nynex, regardless of the quality of service they provide.

The Nynex order numbers for the activity referenced here are:

T1 order	N1KB3431
56K	N1LG2796
56K	N1LG2788
56K	N1PV3635
56K	N1LG2797
56K	N1LT1256

Again, anything you can do to alleviate our ongoing installation and repair problems with Nynex would be very much appreciated.

If you have questions or need more information, please give me a call at 614/798-3328.

Sincerely,

A handwritten signature in cursive script that reads "Vickie E. Rutkowski". The signature is written in dark ink and is positioned above the printed name and title.

Vickie E. Rutkowski, Director
Network Operations

Corporate Headquarters
5000 Arlington Centre Boulevard
P.O. Box 20212
Columbus, Ohio 43220

Telephone 614/457-8600

February 2, 1995

Mr. Peter Sparano
Chief, Consumer Assistance
New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Dear Mr. Sparano:

As an international provider of information and value-added network services, CompuServe Incorporated leases telecommunications services from several interexchange carriers and all of the RBOCs, including NYNEX. The services we buy from telecommunications providers are both the distribution channel for our information service and the raw material of our value-added network business. We devote a great deal of time and energy to communicating our business needs to our carriers because we cannot provide our customers with a good level of service unless we get good service from the carriers. We define good service as (1) completing the installation of requested services correctly and on time and (2) taking trouble reports and restoring service within a reasonable timeframe.

We have several network communication switching centers in the NYNEX region. In fact, this year we will spend about \$3.5 million on regulated NYNEX services. For most of the services we buy from NYNEX, there is no competition. If it were possible for us to use an alternative in New York, we would because the service we get from NYNEX in New York is unbelievably poor. We have a dedicated account team within NYNEX in New York, and we have met with them several times, both in New York and at our headquarters here in Columbus, to discuss their handling of our trouble reports. While these meetings sometimes result in improvements, none of the improvements have been sustained.

A couple of recent examples prompted this letter. On January 17, 1995, at 17:15 our Network Control Center notified NYNEX that a measured business line we had installed for one of our customers was giving an intercept that it had been disconnected (our trouble ticket #: 155009.) NYNEX had a disconnect order number (C1FC8234) and the name and number of the person who had placed the order. However, further investigation showed that the NYNEX representative who had prepared the order had made a typo, and our line was disconnected by mistake. Even so, we had to fax a request to have our line reinstated, and that work wasn't completed until 1/19 at 15:46 - nearly 48 hours later.

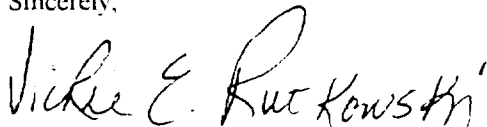
On 1/18/95, while still wrestling with that situation, we opened another ticket with NYNEX for a 2-point private line connecting one of our customers to one of our New York switching centers. When we called for a status of the trouble ticket, the person taking the call for NYNEX, a Ms. Francis, was very rude to our NCC technician and told him the circuit had tested good, and the ticket had been closed. NYNEX is to call us to get confirmation that the problem is gone/fixed before closing a ticket. Our customer was still having problems so we opened another ticket (our # 155097; NYNEX #194404.) When we called about an hour later for an update, we were told the circuit had tested good and the second ticket had been closed!

As this point our NCC technician asked to speak with a manager. He was transferred to a foreman who was very rude, and then transferred to a tester who said that BOTH tickets were still open, but that they were "city controlled tickets." At this point, we called the Business Customer Service Center to have them intervene for us. Three days after the first ticket was opened, NYNEX replaced an office channel unit; on day four, they found a short across the pairs at the serving SLC-96 and the circuit finally really did test good.

Frequently, the representatives of the NYNEX repair organization are very rude and uncooperative. Our NCC technicians are not thin-skinned midwesterners; they are professionals who are very serious about getting service restored for our customers. I contrast that with the NYNEX technicians who really do not seem to care if our service is restored or not. I have personally called NYNEX and asked to speak with the supervisor only to have the NYNEX technician tell me she didn't know who her supervisor was! During the course of the instances described above, our NCC requested that our ticket be escalated; NO came the reply and the NYNEX technician hung up. Our NCC called back and requested to speak to the manager - again NO and dialtone. ONLY when you have a relative monopoly can you treat customers in this fashion!

These are just two of many examples. I'm bringing these issues to your attention in the hope that you have more influence with NYNEX in New York than I. When the time comes that we can use an alternative vendor for most of the services we get from NYNEX, we will; but until then, they are causing us to lose revenue and credibility in one of our largest markets. Anything you can do to improve this situation will be much appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Vickie E. Rutkowski". The signature is written in dark ink and is positioned below the word "Sincerely,".

Vickie E. Rutkowski, Director
Network Operations



EXHIBIT B

United States v. Western Electric Co., Inc.

C.A. No. 81-0192 (HHG)

AFFIDAVIT

State of Ohio,

County of Franklin, ss

VICKIE RUTKOWSKI, being duly sworn, hereby deposes as follows:

1. My name is Vickie Rutkowski. I am Manager, Network Operations, of CompuServe Incorporated. In this position, among other duties, I oversee the management of CompuServe's network installation and network analysis group to ensure that network installation, tracking, and documentation functions are being performed within the established standards. I also supervise CompuServe's Network Control Center, which monitors the on-going performance of the network; thus, I have responsibility over all installation and repair interactions with local exchange carriers for the CompuServe network. Additionally, I serve as liaison to telecommunications vendors for evaluation and purchase of services; and I organize and coordinate activities with other end-users in the telecommunications community.

2. I have reviewed the foregoing CompuServe Incorporated Opposition To Bell Operating Companies Joint Motion To Waive The Interexchange Restriction To Permit Them To Provide Information Services Across LATA Boundaries, including the operational and technical information concerning CompuServe's dependence on local exchange facilities obtained from the

Regional Bell Operating Companies (RBOCs). The descriptions of the CompuServe network are true and accurate to the best of my knowledge and belief. In particular, to the best of my knowledge and belief, in areas served by the RBOCs, CompuServe relies exclusively on the RBOCs for the local telephone facilities used to provide its services. In areas not served by the RBOCs, but by GTE or other independent local exchange carriers (LECs), CompuServe relies exclusively on the telephone facilities of these companies to provide its service. In other words, CompuServe presently does not use satellites, FM subcarrier or other radio frequencies, metropolitan fiber systems, cable systems, or other potential "bypass" media described by the RBOCs for the local distribution of CompuServe's information services to subscribers.

3. Because of its total dependence on RBOC facilities, the CompuServe network is highly vulnerable to any impairment in the speed, quality, and timely installation and repair of the local exchange facilities which CompuServe acquires from the RBOCs. CompuServe is entirely dependent upon the RBOCs to make service repairs and service installations on a timely basis, and CompuServe has no viable distribution alternatives if it suspects, but cannot prove, that the RBOC is not acting in good faith.

4. Delays of a few hours or days in the timely installation and repair of RBOC facilities can have a significant impact on the efficiency of the CompuServe network. Line outages

or call blockages due to problems with RBOC facilities also can affect adversely CompuServe's relationships with its customers.

5. The level of service that we can provide to our customers is so closely tied to the level of service we get from the RBOCS, that I have made contact with every RBOC asking that CompuServe be established as a "national account" with a dedicated account team handling our orders, repairs, and escalations for the entire RBOC region. These efforts have not been successful. For example, when we approached Southwestern Bell, they acknowledged that, taken as a whole, CompuServe is their 53rd largest customer; however, they are cutting staff and cannot dedicate any resources to us at this time. With US West, we can't even find the right group to approach with our request. Ameritech responded that they are testing the "regional account" concept with another large Ohio customer, and they may be ready to make us a national account next year. Only Bell South has made an effort to support us on a regional basis, and they still haven't given us a single point of contact for trouble reporting.

6. In many instances, CompuServe does not receive efficient and timely responses from the RBOCs to its installation and repair orders, and in other instances the responses are incomplete or incorrect. Under my supervision, a partial list of RBOC "trouble reports" has been compiled which represent RBOC service impairments or delays in service which have occurred in the past three months. This list shows that in many cases a RBOC has closed out a CompuServe trouble report without correcting the

problem or even notifying CompuServe. The following "trouble reports" list, classified numerically by CompuServe's Network Order Entry System (NOES) for new service installations, and Customer Service Number (CSN) for existing services, illustrates the various types of troubles and problems which can occur in the use of RBOC facilities:

COMPUSERVE REPORT SUMMARIES

New England Telephone (CSN 113407)

10/13/93 Brockton, MA

We had two dialup lines that would ring no answer due to an equipment failure. We requested that New England Telephone 'make busy' the lines so that callers would hunt past the bad lines. They refused, saying this was not part of their service. In the past they have been willing to do this.

We repeatedly have problems with New York Telephone and New England Telephone with successfully leaving a 'make busy' on a dialup line. They usually put the 'make busy' on the line but then drop it the next day. We always request they leave it active until we call to remove it. The nature of our business is such that we can't immediately dispatch an engineer for this type of problem. That is why the ability to 'make busy' a line is necessary for us to make a problem transparent to our customers.

C&P Telephone Co. (CSN 11392)

09/08/93 LATA 920

One of the trunks on this Feature Group B service stopped taking calls. We did initial troubleshooting and reported the problem to C&P at 21:20 on 9/8. They initially said they could not find the circuit in their records and promised to do some checking. The next time we heard from them was on 9/9 at 10:06 and they reported they had fixed the problem although they were unable to give us any details. The trunk was still not taking calls. On 9/10, C&P reported they released a test mode, but the problem still was not fixed. On 9/11, we tried to get a status and was told that none of the weekend staff could help us. The problem was not resolved until 9/15 at 10 a.m. C&P reported they repaired a 'blown balance lamp' on the channel. This is clearly a problem that should have been detected and repaired on 9/9.

Southern New England Telephone (CSN 111795)

09/14/93 LATA 350

This case illustrates another problem we often see with LEC records being incorrect. On 9/14 SNET issued a false "deinstall" order for our Feature Group B 950 trunks. We were told by their technicians that they were doing "a generic update on the switch which caused us to show up as an extraneous CIC code." Fortunately, we got to them before too much of the deinstall work had been done. They promised to update their records.

US West (CSN 105784)

06/08/93 Minneapolis, MN

At 10:00 a.m. on 6/8, AT&T, acting on behalf of CompuServe, identified and reported to US West a problem related to CompuServe's service. The problem was not resolved until 6/9 at 15:00. Multiple problems made this failure hard to diagnose. US West was not able to get access to their test system due to a bad channel unit in a LEC Central Office. Although problems were reported with a D5 repaired at 1:00 on 6/9, CompuServe's circuit did not come up. The line was finally restored on 6/9 at 15:00 when US West fixed a corrupted backup tape. AT&T escalated to four levels of management at US West by 12:50 on 6/9. As is sometimes the case, even following LEC management escalation does not ensure the problem is resolved any faster. AT&T logged this as a 25:14 hour failure in their monthly service report to us. We were able to keep this site in the network via a long distance dialup connection to our facilities in Columbus.

C&P Telephone (CSN 111041)

09/01/93 Boston, MA

After we reported to C&P that a line was not included in the hunt group at 21:40 on 9/1, we were given an estimated time for repair as 16:00 on 9/2. However, the line was not added to the hunt by the date/time given. The problem was not finally resolved until 13:30 on 9/6. In the meantime, C&P had closed our

trouble ticket out. We had to call repeatedly for status on this trouble.

This is representative of the type of support we get for this type of trouble. The LECs often do not meet time commitments for repair. They also close out trouble tickets without having repaired the problem. We often have to open two or three tickets with them for the same trouble.

Ohio Bell (NOES 11947-1)

This circuit was ordered to the correct location, Arlington, as requested by our Topology group, but Ohio Bell installed it at our Dublin location instead. We have called Ohio Bell to let them know the situation, and Ohio Bell is trying to get this resolved.

US West (NOES 12365-1)

US West has facility problems and can only provide half of the order until an additional cable pair is installed around 12/1.

New York Telephone (CSN 113580)

09/09/93 Multiple Circuits

New York Telephone was doing a routine power conversion when their backup generator power failed. As a result we lost a T1 and approximately 18 analog and digital circuits for over an hour.

Ameritech (NOES 11720-1)

Ameritech went to the installation site twice without calling CompuServe. Original date of installation was scheduled to be 10/8/93, but installation was on 10/10/93.

Southern Bell (NOES 11696-1)

Southern Bell was unable to meet promised installation date of 8/27/93. The line was installed on 8/31/93.

New York Telephone (NOES 11646-1)

New York Telephone assigned the wrong number for the requested installation address and missed the due date.

US West (NOES 12374-1)

US West ran out of the necessary facilities to this site. Original date of installation was 10/8/93, and US West may have this fixed by 10/30/93.

Ameritech (NOES 11720-1)

Ameritech changed the due date from 10/1/93 to 10/5/93 and did not notify CompuServe of the change.

Southern Bell (NOES 11864-1)

Winston-Salem, NC

Southern Bell had an internal scheduling problem and rescheduled CompuServe from 10/15/93 to 10/22/93.

Pacific Bell (NOES 11727-1)

Pacific Bell missed the promised installation due date of 8/30/93. Instead, the installation happened on 9/2/93.

Southwestern Bell (NOES 11910-1)

Southwestern Bell missed the installation date, and no one called CompuServe ahead of time. Although the installation date was promised to be 8/27/93, SWB actually installed the facilities on 8/30/93.

Southern Bell (NOES 12335-1)

Atlanta, Ga

Southern Bell facility problem was rescheduled from 10/18 to 10/25.

7. I also have assembled an aggregated list of recent telephone company service or equipment failures which in some way have adversely affected CompuServe's provision of on-line information services to its customers. For the time period from January 1 to September 30, 1993, the total number of analog/digital, POTs, and T1 "trouble tickets" compiled by CompuServe was 8,036. Of these, 1,933 or 24% were caused in some way by a telephone company equipment or service failure. These features are categorized as follows:

Examples of Recent Telephone Company Failures (Jan.-Sept. 1993):

**	Local site or LEC Central Office problems:	617
*	Cable cuts or switch problems:	929
**	Power to LEC equipment:	45
**	Hunt sequence problems:	29
*	T1 failure:	193

* represents both LEC and IXC-related problems
** represents LEC-related problems only

Of those 1,933 equipment or service problems reported between January and September 1993, only 120 problems (related primarily to programming and routing errors) were attributable solely to failures by the interexchange carriers.

8. The above telephone company "trouble" list is not intended to be exhaustive, and the purpose of the listing is not intended in any way to allege that I have knowledge that in any of the cases the RBOCs acted in bad faith or intentionally. Rather, the purpose of the listing is to illustrate the types of trouble and problems which occur which may have an adverse impact on our network and, therefore, our relationship with our customers who depend upon the timeliness and accuracy of our services. If the RBOCs were interLATA competitors of CompuServe, it would be difficult, if not impossible, to prove that any of the troubles and problems listed above resulted from bad faith or intentional misconduct. In any event, the effect on CompuServe's network is the same.